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I understood that [Mr. Belendiuk] had first spoken to someone at SJI Cellular and that the course of action had already been approved by SJI Cellular. In these circumstances, I did not believe that my approval was necessary, since three members of the Management Committee had already given theirs.^{39/}

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I conferred with the SJI Cellular members of the Management Committee only when a particular issue facing the venture required a joint effort to resolve. For example, when La Star was engaged in settlement negotiations with New Orleans CGSA, Inc. ("NOCGSA"), La Star needed to develop a settlement proposal to present to NOCGSA. Because of the wide variety of possible settlement options and the different interests of the two venturers, a telephone conference was held.^{40/}

The evidence in this proceeding demonstrates that Mr. Nelson's statements were true to the best of his knowledge and belief and that he had no intent to mislead the Commission.

39. First, Mr. Nelson genuinely believed that SJI, not USCC, controlled La Star. See *supra* ¶¶ 34-35. He believed that the La Star's Joint Venture Agreement vested control of La Star in SJI and that the SJI principals were consulted on and approved La Star's actions. See *infra*, ¶¶ 40-44. Many of Mr. Nelson's statements merely described the provisions of the Joint Venture Agreement with respect to the operation and control of the joint venture, which he genuinely believed had been assumed by USCC in good faith.

40. For example, when Mr. Nelson testified in the La Star proceeding that the Management Committee was "controlled by the three members appointed by SJI Cellular," he was describing the composition of the Committee, not its activities. TDS/USCC Ex. 2, ¶ 58 and Tab R, at 3. The paragraph containing that statement refers to the constitution of the Management Committee, not to the nature or extent of the Committee's

^{39/} TDS/USCC Ex. 2, Tab R, at 3, August 1990 Declaration of H. Donald Nelson.

^{40/} TDS/USCC Ex. 2, Tab R, at 3, August 1990 Declaration of H. Donald Nelson.

activity.^{41/} Additionally, at his deposition in the La Star proceeding, Mr. Nelson answered "yes" to the question whether the Management Committee had "the complete and exclusive power to direct and control La Star's activities." TDS/USCC Ex. 2, Tab I, p. 12. In Mr. Nelson's view, the Management Committee had such legal power and could direct and control La Star's affairs. TDS/USCC Ex. 14, at 109-134 (Joint Venture Agreement).

41. Mr. Nelson genuinely believed that the Management Committee's power to control La Star's affairs was exercised in an informal manner through discussions between La Star's counsel and the principals of the joint venture, including SJI's principals.^{42/} Mr. Nelson understood that La Star's counsel, Arthur Belendiuk, used telephone polling to seek approval for a proposed course of action. TDS/USCC Ex. 1, ¶ 30; TDS/USCC Ex. 2, ¶ 14. When he wanted authorization, Mr. Belendiuk first typically called John Brady or Kit Crenshaw, or both, to seek approval for and to discuss proposed courses of action. TDS/USCC Ex. 1, ¶ 30; TDS/USCC Ex. 3, ¶ 12; TDS/USCC Ex. 4, ¶ 14. SJI's principals then approved the proposed course of action.^{43/}

42. Mr. Belendiuk typically called Mr. Nelson next to seek USCC's consent. TDS/USCC Ex. 1, ¶ 30. Mr. Belendiuk usually told Mr. Nelson that the people down South, or the folks at SJI, or the Bradys, had already approved the proposal; he then asked Mr. Nelson for his views. TDS/USCC Ex. 2, ¶¶ 22-24; TDS/USCC Ex. 1, ¶ 30. Mr. Nelson would respond in substance that the proposed action was fine. TDS/USCC Ex. 2, ¶ 23. As was the case with SJI, Mr. Belendiuk understood that when Mr. Nelson or

^{41/} The Joint Venture Agreement gave SJI three of the five seats on the Management Committee and, in Mr. Nelson's view, majority control of the Committee. TDS/USCC Ex. 14, at 109-134; TDS/USCC Ex. 2, ¶¶ 16, 58. SJI appointed John Brady, Pat Brady, and Mr. Crenshaw as its three representatives on the Committee. TDS/USCC Ex. 1, ¶ 4; TDS/USCC Ex. 2, ¶ 16 & Tab B. By letter dated September 14, 1987, USCC formally appointed Kenneth R. Meyers and Mr. Nelson as its representatives on the Committee. TDS/USCC Ex. 2, ¶ 16 & Tab B; TDS/USCC Ex. 1, ¶ 14.

^{42/} Mr. Nelson explicitly acknowledged in his August 1990 Declaration that, "Since August 1987, La Star's Management Committee has functioned on an informal basis." TDS/USCC Ex. 2, Tab R, at 3 (emphasis added). He repeated the same statement verbatim in his written direct hearing testimony submitted in September 1990. TDS/USCC Ex. 2, Tab T, at 4.

^{43/} Mr. Belendiuk understood that when either Mr. Brady or Mr. Crenshaw gave such approval, that person was speaking for SJI. TDS/USCC Ex. 1, ¶ 30; TDS/USCC Ex. 3 ¶ 12.

Mr. Carlson spoke, that individual was speaking for USCC. TDS/USCC Ex. 1, ¶ 32. All decisions thus were resolved through informal discussions, and there was no need for any formal meeting or vote of the Management Committee. TDS/USCC Ex. 1, ¶ 30; TDS/USCC Ex. 3, ¶ 10.^{44/}

43. Telephone records submitted in this proceeding demonstrate communications between SJI and La Star's counsel, reflecting a minimum of 163 telephone calls totaling 871 minutes between La Star's counsel's office and SJI between October 1987 and April 1991. TDS/USCC Ex. 1, Tab H; TDS/USCC Ex. 3, Tab A. In addition, at least 32 items of correspondence sent to Mr. Nelson from 1987 to 1990 reflected on their face that Mr. Belendiuk was regularly communicating with John Brady and Sinclair Crenshaw of SJI. TDS/USCC Ex. 2, ¶ 24 and Tabs D and E. Finally, Mr. Nelson saw invoices submitted by Mr. Belendiuk for legal fees and expenses, which frequently listed conferences with Mr. Brady or Mr. Crenshaw in the description of services. TDS/USCC Ex. 2, ¶ 24 & Tab E.

44. The evidence thus supports Mr. Nelson's testimony that he understood that La Star's counsel, in directing the prosecution of La Star's FCC application, was consulting with the SJI members of the Management Committee and seeking their approval of a proposed action. Mr. Nelson's written testimony in the La Star proceeding was truthful and accurate in stating that, "I understood that [Mr. Belendiuk] had first spoken to someone at SJI Cellular and that the course of action had already been approved by SJI Cellular." TDS/USCC Ex. 2, Tab W at 5. The evidence also therefore confirms the veracity of Mr. Nelson's assertion, questioned in the HDO, that La Star's counsel had informed him that the SJI representatives on the Management Committee had previously approved a proposed course of action. See HDO, 9 FCC Rcd. at 947-54.^{45/}

^{44/} Mr. Nelson contemplated that the Management Committee would take a more active and formal role in directing the affairs of La Star once a construction permit was issued and La Star needed to incur substantial expenditures for its fixed assets to construct a cellular system. TDS/USCC Ex. 2, ¶ 20.

^{45/} Mr. Nelson's written testimony also asserted that, "I did not believe that my approval was necessary, since three members of the Management Committee had already given their approval." TDS/USCC Ex. 2, Tab W, p. 5. This statement was accurate for two reasons. First, Mr. Nelson understood that SJI had approved the action. See *supra*, ¶¶ 41-43. Second, Mr. Nelson meant that he thought his approval was unnecessary because even if he had opposed an action favored by SJI, the SJI position would prevail because SJI outnumbered USCC on the Management Committee by three to two. TDS/USCC Ex. 2, ¶ 61.

45. In the HDO, the Commission also questioned Mr. Nelson's references to the Management Committee in his written testimony because "Nelson's testimony does not disclose that the Management Committee only met once and that there were never any votes taken." *Id.* at 956.^{46/} In his deposition testimony several months earlier, however, in July 1990, Mr. Nelson had disclosed those facts:

Q. How often and where has the committee met?

A. I remember the original meeting here in Chicago, but any other meetings have been over the phone or through Mr. Belendiuk.

TDS/USCC Ex. 2, Tab I, p. 16.

Q. Have any actions been taken by the management committee which required a vote, formal vote? Can you remember any votes that have been taken while you've been on the management committee?

A. I don't recall any.

Id. at 18.

Q. Is it your testimony that you cannot recall ever holding a formal vote since you've been a management committee member?

A. I don't recall a formal vote.

Id. at 19. When he executed the declarations at issue, Mr. Nelson knew that he had already testified to these facts two months earlier. TDS/USCC Ex. 2, ¶ 60.^{47/} Having already disclosed the information in response to deposition questions from opposing counsel, Mr. Nelson cannot have intended to

^{46/} The referenced testimony is Mr. Nelson's direct written testimony submitted in September 1990 as La Star Exhibit 15, TDS/USCC Ex. 2, Tab T.

^{47/} Moreover, Kenneth R. Meyers, USCC's other representative on the Management Committee, testified at his deposition in the La Star proceeding that there were no meetings of the Committee. TDS/USCC Ex. 12, at 10. Indeed, La Star and NOCGSA had stipulated that there were no formal meetings of the Management Committee. TDS/USCC Ex. 13, at 12-13.

conceal that information when he provided his written testimony for the hearing.^{48/} While Mr. Nelson's written statement could have been more precise, the record demonstrates that he was not attempting to be less than truthful.

46. In his deposition testimony in the *La Star* proceeding, Mr. Nelson also allegedly implied that the Management Committee had more than five telephone conferences when Mr. Nelson was not a party to more than five telephone conferences with the principals of SJI. Mr. Nelson testified:

Mr. TOLLIN: How often and where has the committee met?

Mr. NELSON: I remember the original meeting here in Chicago, but any other meetings have been over the phone or through communications through Mr. Belendiuk.

Mr. TOLLIN: Any recollection of how many telephone conferences there were?

Mr. NELSON: No, I don't recall.

Mr. TOLLIN: Less than five?

Mr. NELSON: Probably more than five.

Mr. TOLLIN: And who were on those telephone conferences?

Mr. NELSON: Generally Mr. Belendiuk and myself.

^{48/} Commission law is quite clear that under such circumstances no deceptive intent will be found. See *supra*, ¶ 16; *WWOR-TV, Inc.*, 6 FCC Rcd. 193, 206 (1990) ("We do not infer an intent to deceive when an applicant has disclosed information on the public record"); *Intercontinental Radio, Inc.*, 98 F.C.C.2d 608, 639-40 (1984) (submission of inaccurate statement does not indicate intent to deceive when accurate information previously supplied by party is a matter of record); *Calvary Educational Broadcasting, Inc.*, 9 FCC Rcd. 6412, 6420 (Rev. Bd. 1994); *Barry Skidelsky*, 7 FCC Rcd. 1, 3 (Rev. Bd. 1992) (no intent to deceive where applicant had produced documents that disclosed the allegedly withheld information); *Valley Broadcasting Company*, 4 FCC Rcd. 2611, 2615-16 (Rev. Bd. 1989) (no intent to mislead where applicant had previously disclosed the information in another FCC proceeding); *Omaha Channel 54 Broadcasting Group Limited Partnership*, 3 FCC Rcd. 870, 871 (Rev. Bd. 1988) (no intent to deceive at hearing where applicant clearly disclosed the relevant information in pre-hearing discovery).

TDS/USCC Ex. 2, Tab I at 16. In context, Mr. Nelson did not suggest that there were more than five telephone conferences of the members of the Management Committee but instead that he had more than five telephone conferences with Mr. Belendiuk. Mr. Belendiuk called Mr. Nelson on more than five occasions, TDS/USCC Ex. 2, ¶ 22, and while a telephone conversation between two people may not be thought of by everyone as a conference, Mr. Nelson's testimony that the conferences were between only himself and Mr. Belendiuk demonstrates that he was not attempting to mislead the Commission. TDS/USCC Ex. 2, ¶ 63.^{49/}

47. At his deposition in the La Star proceeding, Mr. Nelson also allegedly testified that there was a vote to amend La Star's Joint Venture Agreement in June 1990 when no formal vote actually was taken. Mr. Nelson's deposition contains the following passage:

Mr. TOLLIN: When the joint venture agreement was amended, was there a meeting by the management committee to discuss the amendment and a formal vote taken?

Mr. NELSON: Which question do you want me to answer?

Mr. TOLLIN: Was there a meeting?

Mr. NELSON: Where people got together?

Mr. TOLLIN: Yes.

Mr. NELSON: No.

Mr. TOLLIN: Could you describe what those communications were?

Mr. NELSON: There was communication with Mr. Belendiuk.

Mr. TOLLIN: Okay. Mr. Belendiuk and yourself?

^{49/} Mr. Nelson also allegedly implied that he had contacts with the Management Committee other than Mr. Belendiuk when he testified that his "primary contact during the time [he was] a member of La Star's Management Committee [was] with La Star's attorney, Arthur V. Belendiuk." TDS/USCC Ex. 2, Tab T, at 4. Mr. Belendiuk was Mr. Nelson's usual contact on La Star matters and Mr. Nelson's written testimony accurately reflected that fact. In his testimony, Mr. Nelson did not intend to suggest that his other contacts were with the Management Committee. TDS/USCC Ex. 2, ¶ 37. He had other contacts with Andy Anderson, one of La Star's consultants. *Id.* & Tab I at 36-37.

Mr. NELSON: Yes.

Mr. TOLLIN: Okay. And no one else was on that call?

Mr. NELSON: On the call? Not that I recall.

Mr. TOLLIN: Okay. So no formal vote was taken by committee members as to whether to approve the amendment?

Mr. NELSON: I don't know what you mean by "formal," but-

Mr. TOLLIN: Was there a vote?

Mr. NELSON: I did tell Mr. Belendiuk that we'd voted for it. The answer is yes. You know, that's what we did in agreeing to the agreement.

TDS/USCC Ex. 2, Tab I at 28-30. In this passage, Mr. Nelson intended to indicate that by "agreeing" to the amendment, USCC had effectively "voted" in favor of the amendment, not that there was a formal vote taken of the Management Committee members with a quorum in place. TDS/USCC Ex. 2, ¶ 74.

48. Finally, several portions of Mr. Nelson's written testimony in the La Star proceeding have been cited as erroneously suggesting that the Management Committee was running the affairs of La Star and that Mr. Nelson consulted with the Management Committee several times. Mr. Nelson testified:

[1] I conferred with the SJI Cellular members of the Management Committee only when a particular issue facing the venture required a joint effort to resolve.

[2] For example, when La Star was engaged in settlement negotiations with [NOCGSA], La Star needed to develop a settlement proposal to present to NOCGSA.

[3] Because of the wide variety of possible settlement options and the different interests of the two venturers, a telephone conference was held. [4]

The Management Committee discussed the various options and unanimously agreed to follow a settlement plan proposed by Sinclair H. Crenshaw, a member of the Management Committee, appointed by SJI Cellular. [5]

At another time, it had been suggested by Mr. Belendiuk that modifications be made to the La Star Joint Venture Agreement. [6]

Certain supermajority provisions, which I understand had never been invoked by Star and which United States Cellular had no interest in invoking were to be deleted, and Star's financial obligations to La Star were reduced so as to be proportionate to its forty-nine percent joint venture interest. [7] USCC's counsel advised us that

it would be in the best interest of USCC to acquiesce in the proposed modifications, and I did so on behalf of Star.

TDS/USCC Ex. 2, Tab R, at 3. Mr. Nelson has explained that the point he thought he was making -- and the point on which he was focusing when he reviewed and signed that testimony -- was that direct communication between USCC and SJI on La Star matters was quite limited as compared to the more usual communication through La Star's attorney, Arthur Belendiuk. TDS/USCC Ex. 2, ¶ 72. In the preceding paragraph of this written testimony, Mr. Nelson had just described his more usual communications with Mr. Belendiuk. *Id.* Tab R, at 2-3. From that perspective, the testimony was not intended to overstate the functioning of the Management Committee or the extent of Mr. Nelson's communication with the Committee.

49. Mr. Nelson, in hindsight, recognizes that this testimony unintentionally implies that he participated in the conference call concerning settlement^{50/} and the conference call concerning the amendment to the Joint Venture Agreement.^{51/}

^{50/} In mid-1989, a settlement conference between representatives of La Star and representatives of NOCGSA was scheduled with the FCC staff. On June 28, 1989, a conference call was held between representatives of SJI and representatives of USCC to agree on La Star's settlement position to be advanced at that meeting. TDS/USCC Ex. 3, ¶ 21; TDS/USCC Ex. 4, ¶ 10. Although he did not actually participate in the conference call, Mr. Nelson was told about the call. TDS/USCC Ex. 2, ¶ 42. Mr. Carlson, Michael G. Hron (corporate counsel for TDS and USCC), John Brady, Pat Brady, Mr. Crenshaw, and possibly Mr. Belendiuk participated in that call. Mr. Crenshaw advanced a settlement proposal upon which all the parties agreed. TDS/USCC Ex. 3, ¶ 21; TDS/USCC Ex. 4, ¶ 10. It was explained to Mr. Nelson after the conference call that various settlement options were discussed and that SJI and USCC had agreed to adopt as La Star's position the option suggested by Mr. Crenshaw. TDS/USCC Ex. 2, ¶ 42.

^{51/} After the FCC issued the La Star HDO, Mr. Belendiuk recommended adoption of an amendment to the Joint Venture Agreement that would address issues raised in the La Star HDO. TDS/USCC Ex. 1, ¶ 22. He called SJI and discussed the provisions that should be amended. *Id.* ¶ 24; TDS/USCC Ex. 4, ¶ 11; TDS/USCC Ex. 3, ¶ 22. He then spoke to Mr. Naftalin and Mr. Nelson about his recommended amendments and sent a draft amendment to Mr. Nelson. TDS/USCC Ex. 1, ¶ 24; TDS/USCC Ex. 2, ¶ 43. On June 15, 1990, a conference call was held among Mr. Belendiuk, John Brady, Mr. Crenshaw, Mr. Carlson, and Mr. Naftalin regarding the amendment. TDS/USCC Ex. 1, ¶ 24; TDS/USCC (continued...)

While each of those conference calls had been described to Mr. Nelson at the time that they occurred, he acknowledges that, with the benefit of hindsight, he should have been more precise because the use of the word "I" in the first sentence of the quoted paragraph could have left the incorrect impression that he personally participated in the telephone conference calls described in that paragraph when other representatives of TDS and USCC participated in the calls. TDS/USCC Ex. 2, ¶ 73. He recognizes that any ambiguity could have been eliminated if he had referred to "representatives of United States Cellular" instead of "I" in the first word of the paragraph and "partners in La Star" rather than "[t]he Management Committee" at the beginning of the fourth sentence.^{51/} *Id.* Mr. Nelson did not focus on those points because he was focused instead on the more basic point that direct communication between USCC and SJI was quite limited. *Id.*

50. Mr. Nelson's explanation of this paragraph is supported by the record. Prior to executing this written testimony, he had disclosed on the record that he had not participated in the subject conference calls. At his July 1990 deposition, Mr. Nelson had made clear that there were "telephone conferences" regarding the amendment of the Joint Venture Agreement, and that the "one conversation" he had "was with Mr. Belendiuk." TDS/USCC Ex. 2, Tab S, at 19. Mr. Nelson therefore

^{51/} (...continued)

Ex. 11, ¶ 14; TDS/USCC Ex. 3, ¶ 23; TDS/USCC Ex. 4, ¶ 11. When Mr. Belendiuk recommended that the changes be made, Mr. Carlson and USCC agreed to do so. TDS/USCC Ex. 1, ¶ 22, 24; TDS/USCC Ex. 11, ¶ 14. Although Mr. Nelson did not participate in that conference call, he was informed of the call's substance. TDS/USCC Ex. 2, ¶ 43-44; TDS/USCC Ex. 9, ¶ 8. Mr. Belendiuk sent the amendment to Mr. Nelson for signature. TDS/USCC Ex. 2, ¶ 44. After discussing the amendment with USCC's counsel, Mr. Nelson signed the amendment and returned it to Mr. Belendiuk. TDS/USCC Ex. 2, ¶ 47 & Tab P, at 9-16.

^{52/} Mr. Carlson, who participated in the calls for TDS and USCC, was not a member of the Management Committee. He generally, however, negotiated settlements involving competing cellular applications and decided whether to settle in particular cases. TDS/USCC Ex. 2, ¶ 7; TDS/USCC Ex. 9, ¶¶ 7, 10. Mr. Carlson and Mr. Nelson generally discussed the progress of negotiations, and Mr. Carlson advised Mr. Nelson of the results of his negotiations. TDS/USCC Ex. 2, ¶ 7; TDS/USCC Ex. 9, ¶ 7. Mr. Carlson had full authority to speak and act on behalf of USCC in such matters, and there generally was no need for Mr. Nelson to participate in the meetings in which Mr. Carlson participated because Mr. Carlson and Mr. Nelson spoke with the same voice. TDS/USCC Ex. 2, ¶ 9; TDS/USCC Ex. 9, ¶ 9.

was not attempting to mislead anyone into the belief that he had participated in the conference calls with SJI.

51. Although Mr. Nelson may have been imprecise in certain of his statements about La Star's Management Committee, there remains no genuine issue as to his good faith. The record satisfactorily shows that he did not intentionally misrepresent facts or lack candor concerning the operation of the Management Committee of La Star. In many instances, Mr. Nelson's testimony regarding the operations of the Management Committee, which he explicitly characterized as "informal," was objectively accurate. In some instances where his testimony was not detailed or precise, it is clear that he supplied accurate and complete information in other testimony in the La Star proceeding, thus negating any inference that he intended to deceive the Commission. To the extent that some of Mr. Nelson's statements were inaccurate or incomplete, the evidence now in the record demonstrates that those statements resulted from honest failures of recollection or an inability to convey completely his perspective on the facts.

The Petition To Delete Footnote 3

52. After the Commission affirmed the *Initial Decision* in La Star I, USCC filed the Petition To Delete Footnote Three. TDS/USCC Ex. 10, Tab A. The petition was filed because footnote three of the Commission's decision left open the possibility that a candor issue might be designated against USCC in future proceedings in light of allegations by NOCGSA that SJI and USCC had lacked candor. TDS/USCC Ex. 11, ¶ 20. The Petition To Delete Footnote Three was drafted by Koteen & Naftalin. A draft of the petition was distributed by Herbert D. Miller, Jr., of Koteen & Naftalin. TDS/USCC Ex. 10, ¶ 35. LeRoy Carlson and Donald Nelson, among others, reviewed the draft of the petition before it was filed; both approved it. TDS/USCC Ex. 9, ¶ 15; TDS/USCC Ex. 2, ¶ 55.

53. In the Petition to Delete Footnote Three, the following statement was made about La Star's Management Committee:

Everything Mr. Nelson and USCC did at the request of La Star's counsel, Mr. Belendiuk, was done in the belief that Mr. Belendiuk was guided by the wishes of SJI, whose principals constituted three of the five members of the management committee and therefore, in Mr. Nelson's view, controlled it.

TDS/USCC Ex. 10, Tab A, at 15. As discussed above, Mr. Nelson knew that Arthur Belendiuk was obtaining approval from SJI for actions and that SJI's three votes controlled the Management Committee. See *supra*, ¶¶ 41-44. The Petition To Delete

Footnote Three advocated what Mr. Nelson genuinely believed was an accurate description of the process.

La Star Pleadings and Filings

54. Finally, statements in submissions filed by La Star also addressed the functioning of La Star's Management Committee. Some of the statements concerning the Management Committee were made in an October 1987 Amendment to La Star's application and in a pleading filed by La Star in March 1988 in response to a NOCGSA petition to deny La Star's application. Those statements include:

Except as otherwise expressly provided herein, complete and exclusive power to direct and control [La Star] is delegated to a Management Committee.^{53/}

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La Star's management team will make and subsequently implement all policy decisions affecting its cellular system.^{54/}

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The partnership itself is governed by a five member Management Committee. Section 4.1 [of the La Star Joint Venture Agreement] places the 'exclusive power to direct and control the Company' with the Management Committee. SJI appoints three members to the Management Committee and Star [USCC] appoints two. Most business and policy decisions of La Star are controlled by a simple majority vote of the Management Committee. Since SJI appoints three members to the Management Committee it has de facto control over La Star's day-to-day business activities.^{55/}

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Star [USCC] can block certain actions SJI may wish to take, but Star has no power to require SJI to take any action. SJI still retains majority voting interest, elects a majority of the members of the Management

^{53/} TDS/USCC Ex. 14, October 26, 1987 Amendment To La Star Application (1987 Amendment) at Exhibit L-2, Joint Venture Agreement, Article 4.1.

^{54/} TDS/USCC Ex. 14, 1987 Amendment, Exhibit L-7, at 1.

^{55/} TDS/USCC Ex. 1, Tab C, Reply to Petition of NOCGSA to Dismiss and Deny filed by La Star on March 2, 1988 (March 1988 Reply), at 9-10.

Committee and can conduct business on a majority vote.^{56/}

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TDS does not have decision-making authority with regard to construction or operation of the system. That power rests with the La Star Management Committee which is controlled by SJI.^{57/}

The March 1988 Reply was based in part on an affidavit of Mr. Nelson. TDS/USCC Ex. 1, Tab C, at 23-24. Although Mr. Nelson did not review the 1987 Amendment and the 1988 Reply, he believed that the central point he was supporting -- that the Joint Venture Agreement placed SJI in control of La Star -- was correct. See *Supra*, ¶¶ 40-41.

55. Many statements concerning the operation of the Management Committee also were made in a pre-hearing Motion for Summary Decision filed by La Star on August 15, 1990. Illustrative of such statements are the following:

The Management Committee, which is controlled by SJI Cellular, has always and will continue to control La Star.^{58/}

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Furthermore, any actions taken by consultants, engineers, attorneys, or Star, USCC and TDS have been taken at the request of the Management Committee.^{59/}

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SJI Cellular elects a majority of the members of the Management Committee, which conducts La Star's day-to-day business by a majority vote.^{60/}

These statements allegedly attempted to convey the false proposition that La Star's Management Committee controlled La Star through formal actions, requests and approvals. However, disclosures about the operations of the Management Committee during depositions and in the Summary Decision Motion itself negate any inference that the motion intended to imply that the

^{56/} TDS/USCC Ex. 1, Tab C, March 1988 Reply, at 11.

^{57/} TDS/USCC Ex. 1, Tab C, March 1988 Reply, at 13.

^{58/} TDS/USCC Ex. 1, Tab G, Summary Decision Motion, at 11.

^{59/} TDS/USCC Ex. 1, Tab G, Summary Decision Motion, at 15.

^{60/} TDS/USCC Ex. 1, Tab G, Summary Decision Motion, at 22.

Management Committee functioned formally or frequently, or that members from SJI and USCC participated together in discussions.

56. Approximately one month before the Summary Decision Motion was filed, the principals of La Star all had testified to the informality of La Star's management at their July 1990 depositions. USCC's Donald Nelson had testified that there had been only one actual meeting of the Management Committee, that any other meetings had been over the telephone or through La Star's counsel, and that to his recollection there had never been any formal votes taken by the Committee. TDS/USCC Exhibit 2, Tab I, at 16-18. Kenneth Meyers, USCC's other representative on the Management Committee, had testified that he was not aware of any Management Committee meetings and that he had not been consulted on any decisions that the Management Committee may have made. TDS/USCC Exhibit 12, at 10, 14. SJI's John Brady had testified that there had been no formal meetings of the Management Committee, that members of the Committee had met only once, in Chicago in 1987, and that no formal votes were taken. TDS/USCC Ex. 13, at 4-9. SJI's Sinclair Crenshaw had testified that the Management Committee had never taken an official vote, that La Star's counsel was the one who initiated the meetings or conference calls, and that La Star's counsel was SJI's point of contact and communication with USCC. TDS/USCC Ex. 1, Tab G, at 58-59.^{61/}

57. Additionally, the Summary Decision Motion explicitly stated that La Star "functioned on an informal basis," TDS/USCC Ex. 1, Tab G, p. 3; "Seldom was there a need for a 'meeting' of the Committee," *id.* The pleading also stated that "La Star's Management Committee has functioned on an informal basis," and, formal "meetings were not necessary for most of the decisions. Agreement with counsel's recommendations was communicated to counsel via telephone from the members of the Management Committee." *Id.* at 11-12. Under these circumstances, there is no basis for finding any intent to mislead the Commission about the functioning of La Star's Management Committee.

4. Description of USCC's Activities.

58. In their testimony in the La Star proceeding, USCC principals H. Donald Nelson, Richard W. Goehring and Mark A. Krohse made statements describing their activities with respect to La Star. At its core, the issue concerning this testimony is whether Mr. Nelson, Mr. Goehring and Mr. Krohse intended to

^{61/} Moreover, at the depositions, La Star's counsel, Arthur Belendiuk, had stipulated that there had not been formal meetings of the Management Committee, a stipulation that NOCGSA's counsel accepted. TDS/USCC Ex. 13, at 12-13.

downplay or conceal the nature and extent of their role, and thus USCC's role, in La Star. The record in this proceeding demonstrates that their statements were accurate in material respect and were not intended to mislead the Commission.

Activities of Donald Nelson

59. H. Donald Nelson testified in the La Star proceeding about his role and the role of USCC in La Star. Illustrative of such statements are the following:

MR. TOLLIN: *Any specific duties you have on the Management Committee?*

MR. NELSON: *Yes.*

MR. TOLLIN: *Could you describe those duties?*

MR. NELSON: *Receive bills and process payment thereof.^{62/}*

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Although I am a member of La Star's Management Committee, I have not been actively involved in the day-to-day management of La Star's affairs, which, to my knowledge, have been litigious in nature.^{63/}

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All services provided by USCC to or on behalf of La Star were technical in nature and were provided at the specific request of SJI Cellular or the Management Committee, either directly or through La Star's counsel.^{64/}

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MR. TOLLIN: *Now, how limited was that involvement [in the day-to-day affairs of La Star]? What were you involved in?*

MR. NELSON: *I was involved with communication with Mr. Belendiuk. I was involved in the*

^{62/} TDS/USCC Ex. 2, Tab I, deposition testimony of H. Donald Nelson, July 18, 1990, at 12. This testimony was repeated in Mr. Nelson's written testimony. TDS/USCC Ex. 2, Tab W, 7.

^{63/} TDS/USCC Ex. 2, Tab R, August 1990 Declaration of H. Donald Nelson, at 2.

^{64/} TDS/USCC Ex. 2, Tab R, August 1990 Declaration of H. Donald Nelson, at 4.

questions that came from him that we were to follow through on cell sites, on payment of bills, on -- I guess, that's about it.^{65/}

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ALJ CHACHKIN: What do you mean by that statement, that you haven't been actively involved in the day-to-day management of La Star's affairs, what do you mean by that?

MR. NELSON: In that statement I mean that I am not involved in the day-to-day management. When I am requested to do something by Mr. Belendiuk or by the management committee I would respond.^{66/}

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Aside from asking USCC personnel to respond helpfully to Mr. Belendiuk's requests for assistance, I have had very little personal involvement, and I have taken very little personal interest, in the La Star matter.^{67/}

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I have always viewed the La Star matter as a trivial aspect of USCC's business, for which people other than USCC employees have been primarily responsible, and I have devoted only the minimal time necessary to it; I have not sought opportunities to do more.^{68/}

In these statements made in the La Star proceeding, Mr. Nelson indicated that his primary roles with La Star were to assure that bills were paid and to perform any tasks requested by Mr. Belendiuk. He stressed the belief that his involvement and interest in the La Star project were minimal. The evidence confirms the truth of these statements from Mr. Nelson's

^{65/} TDS/USCC Ex. 2, Tab J, Testimony of H. Donald Nelson, Tr. 1334.

^{66/} TDS/USCC Ex. 2, Tab J, Testimony of H. Donald Nelson, Tr. 1349-50.

^{67/} TDS/USCC Ex. 2, Tab U, USCC Exhibit 1 (Testimony of H. Donald Nelson), at 15.

^{68/} TDS/USCC Ex. 2, Tab U, USCC Exhibit 1 (Testimony of H. Donald Nelson), at 15.

perspective; any omissions or misstatements by him were not material or intentional.

60. First, when Mr. Nelson testified at his *La Star* deposition that his specific duty on the Management Committee was to receive "the bills and process the payment thereof," he responded accurately. TDS/USCC Ex. 2, Tab S at 7.^{69/} He understood that the specific duty he had as a member of the Management Committee was to pay the bills for *La Star* pursuant to the Joint Venture Agreement. TDS/USCC Ex. 2, ¶¶ 2, 64.^{70/} While he also responded to Mr. Belendiuk's requests for information or assistance, he did not understand the question about his "specific duties on the Management Committee" to call for him to detail everything he had done regarding *La Star*. TDS/USCC Ex. 2, ¶ 65. Mr. Nelson did disclose his other activities with respect to *La Star* elsewhere in his deposition. At other points in his testimony, Mr. Nelson spoke of his discussions with Mr. Belendiuk, TDS/USCC Ex. 2, Tab W at 19; his involvement in the renewal of *La Star*'s cell site options, TDS/USCC Ex. 2, Tab I, at 31-34; his discussions with *La Star* consultant Dr. Andy Anderson, *id.* at 36-37; the provision of some information for the interim operating authority application, *id.* at 51-52; and USCC's work on preparing *La Star*'s budget, *id.* at 45-46, 63-66.^{71/}

^{69/} Until June 1990, *Star* was responsible under the Joint Venture Agreement for paying the expenses associated with prosecuting *La Star*'s application. TDS/USCC Ex. 14, at 127. USCC assumed that obligation when it acquired *Star* in August 1987.

^{70/} During the hearing in the *La Star* proceeding, Mr. Nelson was reluctant to state unequivocally that he personally saw and processed payments for all of *La Star* expenses. Although this reluctance was alleged by NOCGSA to be evasiveness on Mr. Nelson's part, the record now establishes that he was instead trying to make clear that he processed every request for payment that he received, but that there might have been other requests processed by USCC of which he was unaware. TDS/USCC Ex. 2, ¶ 77. Mr. Nelson was appropriately cautious in this regard because he did not process all *La Star* expense payments handled by USCC. TDS/USCC Ex. 2, Tab Y (USCC check request forms and support documents without Nelson's initials or handwriting). Mr. Nelson did not see these payment requests, and others at USCC processed those payments. TDS/USCC Ex. 2, ¶ 77. Mr. Nelson's testimony was not evasive, but rather was candid and accurate.

^{71/} Mr. Nelson did not mention in his testimony in the *La Star* proceeding that in late 1987 and early 1988 he had made introductory telephone calls on behalf of *La Star* to the
(continued...)

61. Second, Mr. Nelson's testimony that he was not actively involved in the day-to-day management of La Star's affairs has been alleged to make it appear as though he played only a minor role in La Star's affairs and that there was little activity for La Star other than legal matters. Mr. Nelson did not consider the occasional calls he received from La Star's counsel Mr. Belendiuk or the processing of La Star's bills to constitute "day-to-day management" of La Star's affairs. TDS/USCC Ex. 2, ¶ 66. All of La Star's activities were related to La Star's litigation for a construction permit. *Id.* In Mr. Nelson's experience in overseeing the day-to-day management of numerous cellular systems at USCC, day-to-day management involved hiring personnel, selecting and maintaining equipment, creating marketing plans, building and constructing cellular systems, reviewing financial performance, and other business matters related to construction, operation and development of cellular systems. *Id.* He did not perform these tasks for La Star. *Id.*

62. To the extent that Mr. Nelson's testimony left any ambiguity about his view of his role in the day-to-day management of La Star, that ambiguity was eliminated by the Presiding Judge during questioning at the hearing in that proceeding. Judge Chachkin asked Mr. Nelson "as far as you're concerned, you have been involved, but you wouldn't describe it as day-to-day management, is that your testimony?" and Mr. Nelson responded, "Right." TDS/USCC Ex. 2, Tab J at 24.^{71/}

63. Third, Mr. Nelson's statement that he devoted only minimal time to La Star was true and accurate from his

^{71/}(...continued)

Creekmores, business partners of USCC in another market. He explains that the reason he did not mention those conversations is simply that he had forgotten them. TDS/USCC Ex. 2, ¶ 69 and Tab X. In that regard, he notes that he typically participated in 20 to 30 telephone calls a day involving USCC's business partners in various markets. This explanation is credible and uncontradicted by anything in the record. In any event, Mr. Nelson was not asked at either his 1990 deposition or at the hearing in the La Star proceeding about any communications that he had with the Creekmores or any of USCC's partners other than SJI.

^{72/} The Bill of Particulars questions whether Mr. Nelson was candid in stating that he did not receive a periodic accounting of La Star's expenses. B/P, pp. 9-10. Mr. Nelson could not have been receiving such periodic accountings because La Star had no prepared financial statements. Mr. Nelson did see La Star financial information in the form of the La Star bills that crossed his desk, which he acknowledged. TDS/USCC Ex. 2, ¶ 21.

perspective because the time he devoted to La Star was minimal in comparison with the time he spent on his duties and responsibilities at USCC. TDS/USCC Ex. 2, ¶ 68. The period 1987 through 1990 was exceptionally busy for USCC and for Mr. Nelson personally. The company put 43 new cellular systems into operation over that period, effectively doubling in size each year. Mr. Nelson was personally working 70 to 80 hours per week and was frequently traveling, in many periods at least half the time. *Id.* ¶ 6. Further, because Mr. Nelson's work concentrates on cellular operations, his principal focus is on markets that USCC owns and operates and he devotes less time to markets where USCC has only a minority interest. *Id.* ¶ 9.

64. Fourth, Mr. Nelson had a reasonable basis for his written testimony that all services provided by USCC to or on behalf of La Star were technical in nature. TDS/USCC Ex. 2, Tab T at 4. The renewal of cell sites, budgeting, and tax return preparation work that USCC provided for La Star involved processing payments, inputting variables into a computer model, and filling in zeros on a tax return; these were ministerial tasks compared to other tasks performed by USCC in its design, construction and operation of 43 cellular systems during this period. TDS/USCC Ex. 8, ¶¶ 6, 8-9, 11, 12. Notwithstanding the Commission's legal conclusion concerning the effect of these activities on who controlled La Star, the record establishes that Mr. Nelson did not recognize these activities as anything other than technical in nature.^{73/}

Statements and Activities of Richard W. Goehring

65. Richard W. Goehring, USCC's Vice-President of Engineering and Network Operations, was deposed in the La Star proceeding in July 1990, TDS/USCC Ex. 7, Tab C, submitted a declaration in August 1990 supporting the Summary Decision Motion, TDS/USCC Ex. 7, Tab D, and testified at the La Star hearing in January 1991. TDS/USCC Ex. 7, Tabs E & F. His testimony concerning his activities and the activities of his engineering staff with respect to La Star raise three general issues:

^{73/} Finally, as he testified in the La Star proceeding, Mr. Nelson did view La Star as a "trivial aspect" of USCC's business for which other people were primarily responsible. Mr. Nelson's activities with respect to La Star were minimal compared to the tasks he generally performs at USCC. See *supra* ¶ 63. Moreover, although there were costs of litigation, these costs were small compared with USCC's costs of conducting its business. See *supra* ¶ 27.

- (1) whether Mr. Goehring candidly described his involvement in the preparation of the engineering portions of La Star's filings;
- (2) whether Mr. Goehring candidly described his involvement with Richard L. Biby and his firm on the La Star project; and
- (3) whether Mr. Goehring candidly described the involvement of other USCC employees in La Star matters.

The record in this proceeding demonstrates that although Mr. Goehring's testimony was overly terse in certain respects, it was candid concerning these matters and was given without any intent to deceive the Commission.

66. **Richard Goehring's Involvement In Preparing La Star's Filings.** In his testimony in the La Star proceeding, Richard Goehring disclaimed any involvement in the preparation of the engineering portions of La Star's 1987 Amendment and its 1988 Application for Interim Operating Authority (1988 IOA Application). Mr. Goehring, for example, testified that (1) he did no "work" on the 1987 Amendment or the 1988 IOA Application, (2) he was not involved in preparing the engineering portions of La Star's filings, (3) he "played no role in the engineering or design" of La Star's 1987 Amendment or 1988 IOA Application, (4) no engineer from USCC or TDS did any work or provided any engineering services on behalf of La Star, and (5) he played no role in the selection of equipment for La Star's interim or permanent systems.^{74/} While the brevity and simplicity of his statements made them subject to misunderstanding, Mr. Goehring did not intentionally understate USCC's involvement in La Star.

67. Richard L. Biby and his consulting engineering firm, Communications Engineering Services (the Biby firm) did La Star's engineering work. Arthur Belendiuk retained the Biby firm for that purpose in early to mid 1987, before USCC acquired its interest in La Star. TDS/USCC Ex. 5, ¶¶ 1-3; TDS/USCC Ex. 1, ¶ 8. The Biby firm's work on the La Star project was handled principally by Mark Peabody, who prepared initial drafts and made telephone calls associated with that process. TDS/USCC Ex. 5, ¶ 4; TDS/USCC Ex. 6, ¶¶ 1, 7.

68. The Biby firm and La Star's counsel prepared the engineering portions of La Star's 1987 Amendment, 1988 IOA Application and 1990 written direct case without substantive

^{74/} TDS/USCC Ex. 7 Tab C at 31; Tab C at 10, Tab F at Tr. 1511-12; Tab D at 1, Tab E at 1; Tab D at 2, Tab E at 2; Tab C at 20, Tab D at 1, Tab E at 1.

input from Richard Goehring. Mr. Biby and Mr. Peabody reviewed La Star's original application filed in 1983, evaluated its original system design, and worked on updating the application. TDS/USCC Ex. 5, ¶¶ 2, 8; TDS/USCC Ex. 1, ¶¶ 7-8. Mr. Belendiuk, Mr. Biby and Mr. Peabody collectively decided that La Star's proposed service area should not be expanded beyond what La Star originally had proposed in 1983. TDS/USCC Ex. 6, ¶ 8. Mr. Peabody worked with a real estate agent in the New Orleans area both to renew cell site option agreements that had lapsed and to locate new cell site locations because some of the sites proposed in La Star's 1983 application were no longer available. TDS/USCC Ex. 6, ¶ 9. Mr. Peabody forwarded site maps to the real estate agent and selected appropriate replacement sites to use in the 1987 Amendment. TDS/USCC Ex. 6 ¶¶ 1, 9. The Biby firm also reviewed the engineering portions of NOCGSA's submissions to the FCC and prepared a critique of those submissions for use in La Star's petition to deny NOCGSA's application. TDS/USCC Ex. 6, ¶ 6; TDS/USCC Ex. 5, ¶ 4.

69. In addition, the Biby firm designed the cellular system proposed in La Star's 1988 IOA Application and prepared all of the related engineering portions of the 1988 IOA Application. TDS/USCC Ex. 5, ¶¶ 4, 8; TDS/USCC Ex. 6, ¶ 6. The equipment categories and types proposed in that application were specified by the Biby firm. TDS/USCC Ex. 6, ¶ 13.

70. Mr. Goehring did not perform any of these tasks. The Biby firm did La Star's engineering work. TDS/USCC Ex. 5, ¶ 11; see TDS/USCC Ex. 6, ¶¶ 6, 16. All of the engineering work performed by the Biby firm was directed, approved and supervised by Mr. Belendiuk. TDS/USCC Ex. 5, ¶ 5; TDS/USCC Ex. 1, ¶ 8. Both Mr. Biby and Mr. Peabody have confirmed that no one at USCC, including Mr. Goehring, directed or instructed the Biby firm in its work on the La Star project. TDS/USCC Ex. 5, ¶¶ 8, 12; TDS/USCC Ex. 6, ¶ 16. Although Mr. Goehring was sent copies of documents and draft engineering materials being prepared by the Biby firm for La Star, his "review" of these materials generally was limited to determining that they related to La Star and did not require his substantive input. TDS/USCC Ex. 7, ¶ 11; see *infra* ¶ 79.

71. Mr. Goehring's responsibility with regard to La Star's engineering was "to be helpful and answer any questions from Mr. Belendiuk or Mr. Biby's firm, if necessary." TDS/USCC Ex. 7, ¶ 8. Mr. Belendiuk told the Biby firm that Mr. Goehring would serve as its principal point of technical contact at USCC. TDS/USCC Ex. 6, ¶ 9. Mr. Goehring, like Mr. Crenshaw or Mr. Brady of SJI, was so designated in order to serve as a resource whenever the Biby firm thought he could be helpful. TDS/USCC Ex. 5, ¶ 6. As part of USCC's responsibility under the Joint Venture Agreement, Mr. Goehring also authorized payment by USCC of the Biby firm's invoices for work on behalf of La Star,

although he did not believe he had the authority to direct or approve that work. TDS/USCC Ex. 7, ¶ 9.

72. Given his responsibility to serve as a resource, Mr. Goehring talked with Mark Peabody about the La Star project on a few occasions. TDS/USCC Ex. 6, ¶ 15; TDS/USCC Ex. 7, ¶ 15. These conversations were typically very short and generally involved requests for assistance in processing cell site acquisitions or renewals. TDS/USCC Ex. 7, ¶¶ 15-16; TDS/USCC Ex. 6, ¶ 15. Mr. Goehring's activities in response to Mr. Peabody's requests were primarily clerical in nature and consisted of approving invoices for cell site option renewal payments, signing cell site option renewals and approving payment for the real estate agent. TDS/USCC Ex. 7, ¶ 15. On at least one occasion, Mr. Peabody also raised technical questions with Mr. Goehring about matters on which the Biby firm had insufficient experience. TDS/USCC Ex. 7, ¶ 16; TDS/USCC Ex. 6, ¶ 15. Responding to Mr. Peabody's requests took an insignificant amount of Mr. Goehring's time. TDS/USCC Ex. 7, ¶ 15.^{75/}

73. From Mr. Goehring's perspective, there was a significant difference between the comprehensive engineering, planning, and design work that he ordinarily did when developing and building USCC's cellular systems and the type of help that he was asked to provide on the La Star project. TDS/USCC Ex. 7, ¶ 21. For USCC's systems, Mr. Goehring determined or approved all of the significant technical parameters. TDS/USCC Ex. 7, ¶ 4. For USCC, he was integrally involved in determining the number and location of cell sites and mobile telephone switching offices; the size and type of towers; what cell site buildings to use and their design; how many channels to equip in each site; and the type and vendor of equipment to purchase for the system. *Id.*^{76/} When Mr. Goehring testified that he did no

^{75/} Although Mr. Goehring was the Biby firm's designated principal contact at USCC, most of Mark Peabody's contact with USCC was not with Mr. Goehring, but with Mark Krohse or Tom Gilliland, an assistant to Mr. Goehring. TDS/USCC Ex. 6, ¶ 14. As Mr. Peabody explained, Mr. Goehring often was out of the office when he called. TDS/USCC Ex. 6 ¶ 14. In those circumstances, Mr. Peabody would sometimes try to find someone else at USCC with whom he could speak. TDS/USCC Ex. 6, ¶ 14.

^{76/} The years 1987 and 1988, when La Star filed its amendment and then application for interim authority, were a busy period for USCC and Mr. Goehring. USCC put seven cellular systems on the air in 1987 and another eighteen cellular systems on the air in 1988. Ex. 7, ¶ 5. Mr. Goehring had direct responsibility for the design and construction of those systems, as well as for the
(continued...)

"work" on behalf of La Star, he meant engineering work of the kind he ordinarily performed for USCC. He did not think the limited tasks he performed on the La Star project were engineering work. *Id.* ¶ 22. Thus, Mr. Goehring believed that his declarations truthfully stated that he was not responsible for the engineering decisions or system design proposed by La Star. *Id.* ¶ 21.^{76/}

74. Mr. Goehring's written statements were tendered in a categorical manner and did not individually address each of his actions. His declarations, however, did disclose that he had approved invoices for the extension of cell site option agreements and that he had signed those agreements. TDS/USCC Ex. 7, Tab D, ¶ 3, Tab E, ¶ 2. Moreover, shortly before signing the declarations, Mr. Goehring testified at deposition that he had (1) signed cell site option renewals, (2) approved payments for option renewals, (3) talked with Mark Peabody about La Star, and (4) received correspondence from the Biby firm that he had turned over to counsel. TDS/USCC Ex. 7, Tab C at 8, 12, 14-15, 18-19. Finally, the only La Star matter in which Mr. Goehring was substantively involved -- his defense of the sufficiency of La Star's estimated costs -- was disclosed at his deposition and in his declarations, and were part of pleadings filed in the La Star proceeding served on opposing counsel. TDS/USCC Ex. 7, Tab C, at 22-23, 31-33, Tab D, ¶ 1, Tab E, ¶ 1.^{78/}

^{76/} (...continued)

engineering portions of any related submissions to the FCC. *Id.* During this period, Mr. Goehring had only one other engineer on staff to assist him with these responsibilities. *Id.*

^{77/} The fact that Mr. Goehring was not responsible for the engineering decisions or system design proposed by La Star has been corroborated by La Star's outside consulting engineers, Richard Biby and Mark Peabody. TDS/USCC Ex. 5, ¶ 8; TDS/USCC Ex. 6 ¶ 16; see *supra* ¶¶ 67-70.

^{78/} In February 1988, in connection with a petition to deny La Star's application filed by NOCGSA, Mr. Goehring was asked by Mr. Belendiuk to review the sufficiency of the construction and operating cost estimates in the 1987 Amendment. TDS/USCC Ex. 7, ¶ 12. He signed an affidavit attesting to the sufficiency of La Star's estimated costs on February 29, 1988; this affidavit was filed in the La Star proceeding. *Id.* Mr. Goehring also prepared a reply declaration regarding the sufficiency of La Star's costs that was filed with the Commission. TDS/USCC Ex. 7, ¶ 14. The time he spent drafting and reviewing his affidavit and declaration represented the great majority of the time he spent on the La Star project before testifying at the La Star hearing in 1991. *Id.*

75. Mr. Goehring's *La Star* declarations were designed to compare the type of work he typically performed for USCC with the assistance he provided to *La Star*. The declarations began by identifying his typical activities on behalf of USCC. TDS/USCC Ex. 7, Tab D, ¶ 2, Tab E, ¶ 1. These activities included configuring the system, determining the location of cell sites and tower heights, and negotiating interconnection agreements -- tasks he did not perform for *La Star*. *Id.*; see *supra* ¶¶ 68-73. The declarations continued by indicating that he played no role in the selection of *La Star*'s engineer, in contrast to his role at USCC, where as director of engineering, he selected its outside engineer. TDS/USCC Ex. 7, Tab D, ¶ 3, Tab E, ¶ 2.^{79/} The declarations next indicated that he played no "role" in the engineering or design of *La Star*'s cellular system, its 1987 Amendment or its 1988 IOA Application, in contrast to his typical activities for USCC, where he was responsible for all engineering and design work. TDS/USCC Ex. 7, Tab D, ¶ 4, Tab E, ¶ 3.

76. In concluding his declarations, Mr. Goehring indicated that no engineer at USCC or TDS, "did any work or provided any engineering services" on behalf of *La Star*. TDS/USCC Ex. 7, Tab D, ¶ 2, Tab E, ¶ 2. Because the declarations on their face identified tasks that he performed on behalf of *La Star*, it is clear that Mr. Goehring meant to use the word "work" to connote his typical engineering work for USCC. TDS/USCC Ex. 7, ¶ 22. Mr. Goehring has acknowledged he could have been more qualified with respect to the word "work." *Id.* Nevertheless, his testimony regarding his substantive involvement in the preparation of the engineering portions of *La Star*'s filings was accurate and he did not attempt to conceal his actions in the *La Star* proceeding.

77. **Richard Goehring's Contacts With The Biby Firm.** In his testimony in the *La Star* proceeding, Richard Goehring stated that he "did not work with Richard L. Biby on the *La Star* project." TDS/USCC Ex. 7, Tab D at 1, Tab E at 1. He also testified that although he received correspondence from the Biby firm relating to *La Star* because he was responsible for approving payment of the Biby firm, his involvement was limited to ensuring that the charges were reasonable. *Id.* at 1486-87. The record in this proceeding demonstrates that this testimony was accurate.

78. Mr. Goehring does not recall ever talking with Richard Biby about *La Star*, much less working with him on the project.

^{79/} Mr. Goehring's brief conversations with Mr. Peabody relating to *La Star* in 1987 and 1988 contrast with the almost daily contact Mr. Goehring had with USCC's outside engineering consultants during this same period. TDS/USCC Ex. 7, ¶ 5.

TDS/USCC Ex. 7, ¶¶ 26-27. Mr. Biby similarly does not recall talking personally with Mr. Goehring about the La Star project. TDS/USCC Ex. 5, ¶ 11. Mr. Goehring did speak with Mr. Peabody of the Biby firm several times, and he did receive correspondence related to La Star from that firm. Bureau Ex. 30, 31, 32, 33, 34, 35, 36, 37, 38, and 39.^{80/} But in stating that he "did not work with Richard L. Biby on the La Star project," he could not have intended to make it appear that he had no contact or interaction with the Biby firm, because he already had disclosed those facts in his deposition in the La Star proceeding days earlier. TDS/USCC Ex. 7, Tab C, at 8, 12. Moreover, he had participated in the pre-deposition document production by turning over documents that reflected correspondence between him and the Biby firm. *Id.*; TDS/USCC Ex. 1, ¶ 25 and Tab E, at 1-3, 5-8, & 22-23.

79. Mr. Goehring did not ask that La Star material be sent to him by the Biby firm. TDS/USCC Ex. 7, ¶¶ 10, 11; TDS/USCC Ex. 5, ¶ 9; TDS/USCC Ex. 6, ¶ 14. Instead, Mr. Biby had these materials sent to Mr. Goehring on his own initiative as a professional courtesy because USCC was paying the bills for the Biby firm's services and because Mr. Goehring was the one responsible for authorizing payment. USCC/TDS Ex. 5, ¶ 9.^{81/} During the period 1987-1988, Mr. Goehring customarily received between four to six inches of mail a day, much of it engineering material that required his detailed review. *Id.* ¶ 11. When he received materials from the Biby firm related to La Star, he would typically read them until he determined that they pertained to La Star, and then would add the documents to a pile of La Star documents he kept on a credenza. *Id.*^{82/} Mr. Goehring never acted on any of the material he received from the Biby firm by giving directives or orders about the work the Biby firm was doing. Mr. Goehring never asked to be kept informed of what the Biby firm was doing for La Star and never called to make

^{80/} Mr. Goehring and Mr. Peabody have testified that their conversations about La Star involved Mr. Goehring merely responding to Peabody's requests for information or assistance. TDS/USCC Ex. 7, ¶¶ 15-16; TDS/USCC Ex. 6, ¶¶ 14-15. Additionally, Mr. Goehring spent very little time looking at the La Star-related materials he received from the Biby firm and did not review them substantively. TDS/USCC Ex. 7, ¶ 11.

^{81/} Mr. Belendiuk also asked the Biby firm to send copies of some materials to Mr. Goehring. TDS/USCC Ex. 5, ¶ 9.

^{82/} At the request of Mr. Belendiuk, Mr. Goehring did ask Mr. Peabody to forward a copy of La Star's 1987 cost estimates. TDS/USCC Ex. 7, ¶ 12. Mr. Goehring needed this information for his affidavit responding to NOCGSA's allegation that La Star did not have sufficient funds to build its proposed system. *Id.*

suggestions about the Biby firm's work for La Star. TDS/USCC Ex. 5, ¶ 9; TDS/USCC Ex. 6, ¶ 16.

80. **The Involvement of USCC's Tom Gilliland.** Mr. Goehring testified in the La Star proceeding that no engineers at USCC worked on La Star's engineering, and that to "the best of [his] knowledge," no engineer at USCC or TDS "did any work or provided any engineering services to or on behalf of La Star." TDS/USCC Ex. 7, Tab C at 11, Tab D at 2, Tab E at 2. He also testified that while Tom Gilliland, a USCC engineer, had assisted him in the preparation of the affidavit responding to NOCGSA's allegations about La Star's estimated costs, Mr. Gilliland did no work related to La Star's applications. *Id.* Tab C at 32-33. Mr. Goehring has made clear that he was not aware of every task performed by Mr. Gilliland at the time that he testified in the La Star proceeding. Mr. Goehring's testimony therefore was candid and, as far as he knew, accurate.

81. As described above, see *supra* ¶ 74, in February of 1988, Mr. Goehring was asked to review the cost estimates in La Star's 1987 Amendment in order to respond to NOCGSA's petition to deny La Star's application. TDS/USCC Ex. 7, ¶ 12. Mr. Goehring asked Tom Gilliland, the only other engineer on his staff at USCC, to price out La Star's proposed system based on USCC's actual experience in constructing cellular systems.^{83/} *Id.* Mr. Goehring reviewed the information generated by Mr. Gilliland, concluded that La Star's cost estimates were reasonable and signed an affidavit to that effect on February 29, 1988. *Id.*

82. Before appearing in Washington to testify at the La Star hearing, Mr. Goehring did not know that Tom Gilliland had done anything else with respect to La Star. TDS/USCC Ex. 7, ¶ 24. During his cross-examination at the hearing, Mr. Goehring learned for the first time that Mr. Gilliland might have performed some other tasks on the La Star matter; he subsequently learned that Mr. Gilliland apparently assisted Mr. Peabody directly with some cell site option renewals and La Star's budget for the 1988 IOA Application. *Id.*^{84/} Mr. Goehring had not assigned these additional tasks to Mr. Gilliland and at the

^{83/} Mr. Goehring had not participated originally in the preparation of La Star's cost estimates.

^{84/} Mr. Gilliland provided the Biby firm with assistance in preparing the budget for the IOA Application. TDS/USCC Ex. 6, ¶ 13. Mr. Peabody gave Mr. Gilliland a list of the equipment categories and general types of equipment to be included in each category and asked Mr. Gilliland to estimate the costs based on USCC's experience in constructing systems. *Id.* Mr. Peabody was referred to Mr. Gilliland by Mark Krohse of USCC. *Id.*